

MICHAEL J. GARCIA
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Southern District of New York
Attorney for Defendant
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREGORY NAKSHIN,

Plaintiff,

v.

PETER KEISLER, ACTING ATTORNEY
GENERAL, UNITED STATES DEPARTMENT
OF JUSTICE,

Defendant.

ANSWER

07 Civ. 4140 (AKH)

ELECTRONICALLY FILED

Defendant Acting Attorney General Peter D. Keisler,¹ United States Department of Justice, by his attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, respectfully answers plaintiff's complaint on information and belief as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the complaint.

¹ Acting Attorney General Peter Keisler has been substituted for former-Attorney General Alberto Gonzales pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

2. Denies the allegations of paragraph 2 of the complaint, and avers that Alberto Gonzales resigned as Attorney General of the United States effective September 17, 2007. Peter D. Keisler is currently the Acting Attorney General.

3. Paragraph 3 of the complaint sets forth plaintiff's allegations of jurisdiction to which no response is required.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4 of the complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the complaint, except admits that plaintiff applied for a position with the U.S. Department of Justice as an Automated Litigation Support Specialist in August 2002.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 7 of the complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the complaint.

9. Admits the allegations of paragraph 9 of the complaint.

10. Neither admits nor denies the allegations of paragraph 10 of the complaint because they constitute plaintiff's characterization of the proceedings before the Merit Systems Protection Board ("MSPB") to which no response is required.

11. Neither admits nor denies the allegations of paragraph 11 of the complaint because they constitute plaintiff's characterization of the proceedings before the MSPB to which no response is required.

12. Neither admits nor denies the allegations of paragraph 12 of the complaint because they constitute plaintiff's characterization of the proceedings before the MSPB to which no response is required.

13. Neither admits nor denies the allegations of paragraph 13 of the complaint because they constitute plaintiff's characterization of the proceedings before the MSPB to which no response is required.

14. Neither admits nor denies the allegations of paragraph 14 of the complaint because they constitute plaintiff's characterization of the proceedings before the MSPB to which no response is required.

15. Neither admits nor denies the allegations of paragraph 15 of the complaint because they constitute plaintiff's characterization of the proceedings before the MSPB to which no response is required.

16. Neither admits nor denies the allegations of paragraph 16 of the complaint because they constitute plaintiff's characterization of the proceedings before the MSPB to which no response is required.

17. Neither admits nor denies the allegations of paragraph 17 of the complaint because they constitute plaintiff's characterization of the proceedings before the MSPB to which no response is required.

18. Neither admits nor denies the allegations of paragraph 18 of the complaint because they constitute plaintiff's characterization of the proceedings before the MSPB to which no response is required.

19. Neither admits nor denies the allegations of paragraph 19 of the complaint because they constitute plaintiff's characterization of the proceedings before the Equal Employment Opportunity Commission to which no response is required.

20. Admits the allegations of paragraph 20 of the complaint.

21. Denies the allegations of paragraph 21 of the complaint.

22. The allegations contained in paragraph 22 of the complaint set forth conclusions of law to which no response is required.

FIRST DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The Court lacks subject matter jurisdiction.

THIRD DEFENSE

Plaintiff's claims are barred by applicable statutes of limitation.

FOURTH DEFENSE

Plaintiff failed to timely exhaust all available administrative remedies.

FIFTH DEFENSE

Defendant's treatment of plaintiff did not constitute prohibited discrimination on any basis.

SIXTH DEFENSE

Actions taken by the defendant, his agents and his employees, were motivated by legitimate, nondiscriminatory reasons, which were not pretextual.

SEVENTH DEFENSE

Plaintiff has failed to demonstrate his damages.

EIGHTH DEFENSE

Plaintiff has failed to mitigate his damages.

WHEREFORE, defendant demands judgment dismissing plaintiff's complaint and granting such further relief as this Court deems proper, including costs and disbursements.

Dated: New York, New York
October 5, 2007

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for Defendant United States of America

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TO: Gregory Nakshin
78 Thornycroft Ave.
Staten Island, NY 10312

Plaintiff pro se

CERTIFICATE OF SERVICE

I, John D. Clopper, an Assistant United States Attorney for the Southern District of New York, hereby certify that on October 5, 2007, I caused a copy of the foregoing Answer to be served upon the following by federal express:

Gregory Nakshin
78 Thornycroft Ave.
Staten Island, NY 10312

Plaintiff pro se

/s/ John D. Clopper
John D. Clopper